



May 25, 2000

Sergeant Wyman Hopkins
City of Rosenberg
2120 Fourth Street
Rosenberg, Texas 77471

OR2000-2074

Dear Sergeant Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135640.

The Rosenberg Police Department (the "department") received a request for an incident report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You do not adequately explain how section 552.108(a)(2) applies to the submitted information. Although you state that the submitted information pertains to a criminal investigation that has concluded, you imply that there may yet be a prosecution of this matter. Moreover, the submitted documents indicate that the

victim wishes to pursue criminal charges against the suspect.¹ Section 552.108(a)(2) is inapplicable to criminal cases that have not reached a final resolution. Therefore, we conclude that the department cannot withhold the requested information under section 552.108(a)(2).² The department must release the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

¹We note that the investigation report indicates the case status as "ClrByAdult." You offer no explanation or clarification of this term or other guidance as to the status of this case.

²Section 552.108(a)(1) affords protection for information related to pending investigations and prosecutions, however you neither assert this provision nor show how release of the requested information would interfere with the detection, investigation or prosecution of crime.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Jennifer Bialek". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/CHS/ljp

Ref: ID# 135640

Encl. Submitted documents

cc: Ms. Gloria Gonzalez
203 Rocky Falls Parkway
Richmond, Texas 77469
(w/o enclosures)